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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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**AUG 31 1998**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of Section 73.202(b), )  
Table of Allotments, FM Broadcast Stations )  
(Anniston and Ashland, AL, College Park, )  
Covington, and Milledgeville, Georgia )

MM Docket No. 98-112  
RM-9027  
RM-9268

To: Chief, Allocations Branch

**COMMENTS AND COUNTERPROPOSAL TO RELOCATE  
CHANNEL 264A TO SOCIAL CIRCLE, GA AND UPGRADE IT TO 264C3**

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## SUMMARY

After Preston W. Small filed his rule making petition proposing to move his Station WLRR-FM from Milledgeville, Georgia to Covington, Georgia, WNNX License Investment Co. (WNNX) filed a rule making petition to move its Station WHMA-FM from Anniston, Alabama to College Park, Georgia, located in the southern portion of the Atlanta Urbanized Area. At the time WNNX filed its petition for rule making WNNX had an application for review pending which appealed an earlier Commission decision denying WNNX's earlier attempt to move its Anniston station to Sandy Springs, Georgia located in the northern portion of the Atlanta Urbanized Area. WNNX initially attempted to prosecute its application for review and its College Park rule making proposal simultaneously; WNNX, through its predecessor in interest, opposed an effort to have its application for review dismissed as moot. WNNX claims in its College Park rule making petition that the application for review presents "compelling" reasons for reversal even while WNNX's College Park rule making petition picks the Sandy Springs rule making apart point-by-point in a fruitless attempt to show the "superiority" of its College Park proposal. However, on December 11, 1997, nearly one year after the mootness of WNNX's application for review was pointed out to WNNX via a December 23, 1996 Motion to Dismiss Application for Review and to Terminate Proceeding, WNNX filed to dismiss its Sandy Springs, GA application for review.

Given the circumstances of WNNX's attempt to first move its Anniston, AL station to the northern portion of the Atlanta Urbanized Area coupled with WNNX's current attempt to move its Anniston, AL station to the southern portion of the Atlanta Urbanized Area, WNNX's claim that it is seeking to serve the nominal community of license and that it is not seeking to serve Atlanta lacks credibility. What is clear is that WNNX wants to move its Anniston station to a location which

places a city grade signal over Atlanta and which places a 60 dbu signal over a substantial portion of, if the entire, Atlanta Urbanized Area. Indeed, WNNX admitted that its College Park petition is merely a technical manipulation of the Commission's relocation rules when it advised the Commission that the College Park proposal "offer[s] a simpler, less controversial proposal for WHMA which fully complies with the Commission's technical rules and policies with regard to change in community of license." The common thread between WNNX's Sandy Springs and College Park proposals is service to Atlanta, and based upon the objective facts, the underlying nominal, proposed communities of license are not of interest to WNNX.

An analysis of the Tuck community interdependence factors reveals that College Park is not independent of Atlanta nor of the Atlanta Urbanized Area. WNNX even makes the preposterous claim that College Park, a part of the Atlanta Urbanized Area as defined by the U.S. Census Bureau, is not a "suburb" of Atlanta. Given this bizarre statement, WNNX's Tuck analysis is not entitled to any credibility. College Park's prized business, the Hartsfield-Atlanta International Airport, is owned and serviced by the City of Atlanta. College Park's entire population is just over 20,000 while the airport employs 33,000-38,000 people, not to mention the 801 other businesses which College Park lays claim to, meaning that the airport and the other businesses located in College Park are entirely dependant upon a mobile labor pool which commutes into College Park. The Census Bureau reports that more than 80% of the College Park work force works outside of College Park in the Atlanta Urbanized Area. Not only is College Park a "suburb" of the Atlanta Urbanized Area, College Park is dependent upon Atlanta and the Atlanta Urbanized Area for goods, services, and employees. Accordingly, the radio signals located in the Atlanta Urbanized Area must be attributed to College Park which makes Small's Covington or Small's Social Circle proposals superior under § 307(b).

## INTRODUCTION

Preston W. Small (Small), by his attorney, hereby comments upon the Commission's July 10, 1998 Notice of Proposed Rule Making (NPRM), DA 98-1330 and submits a counterproposal. In support whereof, the following is respectfully submitted:

1) The Commission is studying conflicting rule making proposals. Small's December 23, 1996 proposal seeks to reallocate Channel 264A from Milledgeville, GA to Covington, GA as an upgraded Channel 264C3.<sup>1</sup> Under this proposal Covington would receive its second local aural service and its first local FM service.<sup>2</sup> In the instant comments, Small counter proposes to reallocate Channel 264A from Milledgeville, GA to Social Circle, GA as an upgraded Channel 264C3. Under this proposal, Social Circle, and Walton County, would receive their first local aural service.

2) WNNX License Investment Co.'s (WNNX) November 6, 1997 Petition for Rule Making seeks to downgrade Channel 263C at Anniston, AL to Channel 263C3 and to reallocate Channel 263C3 to College Park, GA. Under this proposal College Park would receive its first local aural service. In order to effectuate its downgrade proposal, and to make up for lost service in the Anniston area, WNNX proposes to add Channel 261C3 to Anniston and Channel 264 A to Ashland, AL.

### A. WNNX's PROPOSED URBAN MIGRATION

#### 1. Errors in the NPRM resulting from reliance upon WNNX's Petition.

3) The NPRM discusses the Commission's concerns surrounding the reallocation of a station located outside of an urbanized area to a community located within the urbanized area.

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<sup>1</sup> Mr. Small is the licensee of Station WLRR which operates on Channel 264A at Milledgeville, GA.

<sup>2</sup> Mr. Small reaffirms his intent to promptly implement the upgrade if the Covington proposal is adopted.

NPRM, ¶¶ 5-8. Before proceeding to discuss the substantive merits of WNNX's proposal, it is necessary to point out to errors from WNNX's Petition which are referenced in the NPRM. First, the NPRM repeats erroneous language from WNNX's Petition, ¶ 15 when it states that "the Commission does not require a Tuck, supra, showing where less than 50% of the Urbanized area will be encompassed . . . ." NPRM, ¶ 6. In support of this statement WNNX relies upon Headland, AL and Chattahoochee, FL, 10 FCC Rcd. 10352 (1995). WNNX has misread Headland, AL and Chattahoochee, FL.

4) The "50% rule" announced in Headland, AL and Chattahoochee, FL involves the reallocation of a channel to an area "located outside but proximate to Urbanized Areas . . ."<sup>3</sup> The "50% rule" announced in Headland, AL and Chattahoochee, FL concerns the circumstances under which a Tuck community independence analysis is required when a station is to be relocated to an area "located outside but proximate to Urbanized Areas." The question the Commission faced in Headland, AL and Chattahoochee, FL was that a proposal might seek to cover the Urbanized Area

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<sup>3</sup> The pertinent language from Headland, AL and Chattahoochee, FL is

it has not been clear what procedures should be followed when a station is seeking to reallocate its channel and modify its license from a rural community to another community that is located outside but so close to an Urbanized Area that it actually would place a city-grade (70 dBu) signal over all or a majority of the Urbanized Area. We believe that such cases logically raise the same policy concerns that are present when a station seeks to move to a community within an Urbanized Area because it would be placing a city grade signal over most of the Urbanized Area as if it were licensed to the center city. Consequently, to address these policy concerns, we will henceforth require stations seeking to move from rural communities to suburban communities located outside but proximate to Urbanized Areas to make the same showing we currently require of stations seeking to move into Urbanized Areas if they would place a city-grade (70 dBu) signal over 50% or more of the Urbanized Area.

Headland, AL and Chattahoochee, FL, 10 FCC Rcd 10354 ¶ 11.

even though the proposed city of license is not included in the Urbanized Area as defined by the Bureau of the Census.<sup>4</sup> Instantly, WNNX proposes to reallocate the Anniston channel to College Park, an area which is located within the Atlanta Urbanized Area. WNNX Petition, ¶ 12. The “50% rule” announced in Headland, AL and Chattahoochee, FL has nothing to do with WNNX’s proposal to move WHMA-FM from the Anniston Urbanized Area into the Atlanta Urbanized Area.<sup>5</sup> On its face WNNX’s proposal intends to provide service to the Atlanta Urbanized Area and the question to be answered is whether College Park is sufficiently independent to warrant a “first local service” preference under § 307(b). WNNX’s erroneous conclusion to the contrary notwithstanding, because WNNX’s proposed city of license lies within the Atlanta Urbanized Area, the Tuck analysis is applicable notwithstanding the amount of the urbanized area covered by WNNX’s proposed city grade service contour.

5) On the issue of signal coverage it is important to notice that while WNNX claims that its proposed College Park principal community contour covers “only 44.3%” of the Atlanta Urbanized Area, WNNX Petition, ¶ 15, WNNX fails to note that 77.7% of its city grade service contour will lie over the Atlanta Urbanized Area.<sup>6</sup> Small Engineering Exhibit, Attachment L hereto, p. 3.

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<sup>4</sup> See Ada, Newcastle and Watonga, OK, 11 FCC Rcd 16896 ¶ 14 (1996) for a discussion of when the Tuck factors are applied to a proposed community located outside of an Urbanized Area.

<sup>5</sup> While a Tuck analysis is not required when a licensee proposes a relocation within the same Urbanized Area, see East Los Angeles, Long Beach, and Frazier Park, California, 10 FCC Rcd 2864 (1995), that situation is not presented instantly where WNNX proposes to move Station WHMA-FM from the Anniston Urbanized Area approximately 80 miles across state lines to the much larger Atlanta Urbanized Area.

<sup>6</sup> WNNX’s Petition does not disclose the amount of the City of Atlanta which would be covered by its proposed city grade contour. In view of the fact that licenses are awarded to  
(continued...)

Additionally, WNNX fails to note that an optimally located Class C3 facility in the Atlanta Urbanized Area would “cover only 57% of the [Atlanta] Urbanized Area,” i.e., an optimally located Class C3 signal would cover only about 13% more of the Atlanta Urbanized Area compared to WNNX’s proposal. Small Engineering Exhibit, Attachment L hereto, p. 3. The fact is that the Atlanta Urbanized Area is so large that it is simply not possible to cover much more than a half of the area with even an optimally located Class C3 facility and WNNX’s reference to “only 44.3%” coverage does not point to any important issue. WNNX’s efforts to make it appear that it is not proposing an urban radio station does not withstand even cursory analysis.

6) The second noticeable error which the NPRM obtained from the WNNX Petition is that “the population of College Park is 5.2% of the population of the Atlanta Urbanized Area.” NPRM, ¶ 6; WNNX Petition, ¶ 15.<sup>7</sup> However, the population of College Park is 20,457 while the population of the City of Atlanta is 394,017 and WNNX reports that the College Park population is 5.2% of the City of Atlanta population. WNNX Petition, ¶ 15. It is understandable why the Commission would mistakenly assume that WNNX was referring to the Atlanta Urbanized Area population in reference

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<sup>6</sup>(...continued)

“communities” and not to “urbanized areas,” whether WNNX’s proposed city grade contour covers the central city in the Atlanta Urbanized Area is a critical concern, regardless of the total amount of the Urbanized Area which is covered. Figure 13 in the WNNX Petition apparently shows the City of Atlanta as a star which is covered by WNNX’s 70 dBu contour. Moreover, WNNX’s Figure 2 shows that the 60 dBu contour of its proposed College Park station will extend well beyond the City of Atlanta. Small’s analysis shows that WNNX’s proposed 70 dBu signal would completely cover the City of Atlanta while its proposed transmitter site is located within the City of Atlanta city limits. Attachment L hereto, figure 6.

<sup>7</sup> The population comparison seeks to determine the relative sizes of the dog and its tail. The larger the proposed community is in comparison to the Urbanized Area, the more likely it will operate as an independent entity, such as Minneapolis-St. Paul.

to the 5.2% figure because it is the comparison of the College Park population to the Atlanta Urbanized Area population which is important. See e.g. Bay St. Louis and Poplarville, MS, 10 FCC Rcd. 13144, 13145 ¶ 6 (1995); D'Iberville and Wiggins, MS 10 FCC Rcd 10796, 10797 ¶ 4 (1995).<sup>8</sup> The population of the Atlanta Urbanized Area is 2,157,806 according to the 1990 Census of Population and Housing, 1990 CPH-2-12, p. 81; Attachment A hereto. Thus, the College Park's population is 0.9% of the population of the Atlanta Urbanized Area. WNNX has not presented a single case in which the Commission granted a relocation to an Urbanized Area in which the population of the proposed city of license was so minuscule compared to the Urbanized Area's population. Accordingly, WNNX's proposal is not deserving of a "first local service" preference.

**2. WNNX's proposal lacks credibility and is merely a technical manipulation of the rules.**

7) WNNX understands that regardless of how burdens of proof are allocated in the first instance, that in order to prevail WNNX must demonstrate that College Park is a community which is independent of the Atlanta Urbanized Area for purposes of § 307(b) allocation purposes. An issue which arises immediately upon reviewing WNNX's Petition is the credibility of WNNX's assertion that it is seeking to serve College Park rather than the City of Atlanta or the Atlanta Urbanized area.

8) As noted in WNNX's Petition, WNNX inherited WHMA-FM's prior owner's Application for Review which appealed the decision denying a relocation of WNNX's Anniston station to Sandy Springs, GA which is located north of the Atlanta Urbanized Area. Report and Order, 6 FCC Rcd.

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<sup>8</sup> In cases involving proposed relocations to areas beyond the boundaries of an Urbanized Area in which an urban migration issue is raised the Commission may compare the proposed city of license's population to the central city's population. See Ada, Newcastle and Watonga, OK, 11 FCC Rcd 16896 ¶ 15 (1996); Scotland Neck and Pinetops, NC, 7 FCC Rcd. 5113 ¶¶ 2, 4 (1992).

6580 (MMB 1991). While WNNX's Petition claims that its Application for Review presents "a compelling case" for reversal of the 1991 Report and Order, Petition, ¶ 3, the Commission dismissed WNNX's Application for Review based upon WNNX's post-Petition request. Order, 13 FCC Rcd. 2104 (Pol. Rules. Div. 1998).

9) In the first instance WNNX had its heart set on serving Sandy Springs to the north of the City of Atlanta. Now WNNX claims that it earnestly seeks to serve College Park to the south of the City of Atlanta. Obviously, the common thread between WNNX's two proposals is service to Atlanta. Indeed, WNNX even claims that it is filing for College Park because the College Park proposal "offer[s] a simpler, less controversial proposal for WHMA which fully complies with the Commission's technical rules and policies with regard to change in community of license." WNNX Petition, ¶ 4. The Commission long ago stated that

We have consistently given little or no weight to claimed first local service preferences if, given the facts and circumstances, the grant of a preference would appear to allow an artificial or purely technical manipulation of the Commission's 307(b) related policies.

Memorandum Opinion and Order, 5 FCC Rcd 7094, 7096 ¶ 14 (Comm'n 1990). WNNX has admitted that its College Park proposal was filed merely to comply with the technical requirements of the Commission's relocation rules and provision of service to College Park is not an important concern to WNNX.<sup>9</sup>

10) WNNX's College Park proposal is being prosecuted to stand in the shoes of its recently abandoned Sandy Springs relocation project. Even without examining the individual Tuck factors,

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<sup>9</sup> WNNX effectively states to the Commission, "hey, you didn't like that first one, how about this new one, we think it satisfies the technical requirements of your rules and lets us get close to Atlanta."

it is clear that WNNX's proposal constitutes a merely technical manipulation of the rules, a manipulation which is designed to provide service to the City of Atlanta and to the Atlanta Urbanized Area. Accordingly, WNNX's proposal is not entitled to a "first local service" preference and the Atlanta Urbanized Area's radio signals should be attributed to College Park.

**3. Tuck Factor Analysis--College Park should not receive a first local service priority.**

11) In applying the Huntington doctrine the Commission examines three issues: (1) signal population coverage; (2) the size of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city. NPRM, ¶ 6. Regarding the signal population coverage, WNNX's College Park proposal will disrupt service to the 658,920 people who currently receive service from WHMA-FM.<sup>10</sup> WNNX Petition, Technical Exhibit, p. 8. WNNX's proposed College Park service will provide the 38th authorized service to the Atlanta Urbanized Area. Attachment L hereto, p. 3. WNNX's College Park proposal will cover substantially all, if not all, of the Atlanta Urbanized Area with 60 dBu service, WNNX Petition, Technical Exhibit, Figures 2, 7, while its 70 dBu city grade service will cover and 44.3% of the Atlanta Urbanized Area, WNNX Petition, ¶ 15, and all of the Atlanta central city. WNNX Petition, Technical Exhibit, Figure 13; Attachment L hereto, figure 6. Moreover, WNNX's proposed transmitter site is located in the City of Atlanta. Attachment L hereto, figure 6. Analysis of the proposed signal coverage reveals that WNNX intends to serve the City of Atlanta and the Atlanta

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<sup>10</sup> WNNX has proposed the allocation of two stations to the Anniston area in an attempt to minimize the proposed loss of existing service to 658,920 people and WNNX has stated its intention to apply for these stations and to construct them. WNNX Petition, ¶ 21. However, the Commission does not enforce this type of statement of intent and there is no requirement that WNNX follow through with its suggestion.

Urbanized Area, rather than its proposed community of license, College Park. This factor does not support allocating WHMA-FM's signal to College Park.

12) The relative size of the cities is as follows: the City of Atlanta has 394,017, the Atlanta Urbanized Area has 2, 157,806, Attachment A hereto, while College Park has 20,457, Attachment D hereto. College Park's population is 5.2% of the Atlanta City population and a mere 0.9% of the Atlanta Urbanized Area population. College Park is a very small portion of the very large Atlanta Urbanized Area. Moreover, WNNX states that College Park is only seven miles from the City of Atlanta WNNX Petition, Exhibit 1, p. 1, October 30, 1997 letter from College Park's mayor to WNNX.<sup>11</sup> The fact that two communities, East Point and Hapeville are between College Park and Atlanta is not significant. Those communities are themselves small in population and land area (they have a combined population of approximately 40,000 according to the 1990 Census; see Attachment D for land area relationships). Thus, College Park is a very small community closely proximated to a very large city and a very large Urbanized Area. This factor does not support allocating WHMA-FM's signal to College Park.

13) The Commission has determined that the interdependence between College Park and the City of Atlanta is the most important criterion in determining whether a given location is a "community" for § 307(b) allocation purposes. Faye & Richard Tuck, 3 FCC Rcd. 5374, 5378 ¶¶ 34, 36 (Comm'n 1988). WNNX fares no better when one examines the attributes of interdependence

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<sup>11</sup> An examination of a Rand-McNally Road Atlas and the U.S. Census maps at Attachment D hereto indicate that the distance from College Park to Atlanta is only about 2 miles. Which ever distance is chose is irrelevant because neither distance is significant.

which the Commission finds relevant. In determining interdependence the Commission looks to the following eight factors:

(1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

Faye & Richard Tuck, 3 FCC Rcd. at 5378 ¶ 36.

14) An analysis of these eight interdependence factors is to be made in the context of a sliding scale in which

the required showing of interdependence between the specified community and the central city will vary depending on the degree to which the second criterion--relative size and proximity suggests that the community of license is simply an appendage of a large central city. When the specified community is relatively large and far away from the central city, a strong showing of interdependence would be necessary, to support a Huntington exception. On the other hand, less evidence that the communities are interdependent would be required when the community at issue is smaller and close to the central city.

Faye & Richard Tuck, 3 FCC Rcd. at 5378 ¶ 34.

15) Instantly, WNNX states that College Park is located "seven miles south of the City of Atlanta." WNNX Petition, Exhibit 1, p. 1, October 30, 1997 letter from College Park's mayor to WNNX. While WNNX notes that "College Park is not contiguous to Atlanta but separated by the Communities of East Point and Hapeville" (a combined population of approximately 40,000 people according to the 1990 Census of Population and Housing), in an urban area containing more than 2 million people, 10 miles is not a great distance. Moreover, College Park is one community away

from Atlanta, that is, with limited exception along the East Point/Hapeville border, East Point, Hapeville, and College Park do not line up so that College Park is located three communities away from Atlanta. Because College Park is so close to the City of Atlanta, and because the populations of the City of Atlanta and the Atlanta Urbanized Area dwarf that of College Park, a lesser showing of interdependence is required.<sup>12</sup>

16) In an effort to show that College Park has its own transportation facilities WNNX asserts that one “of the most visible signs of College Park’s economic independence [is] the Hartsfield Airport.” WNNX Petition, p. 12 § 6. WNNX claims that Hartsfield airport, inter alia, causes College Park to be “a major transportation hub” and that the airport “is subject to the City’s taxing authority.” WNNX Petition, p. 14 § 10. Contrary to WNNX’s suggestion, the close link with the airport which WNNX’s Petition makes indicates that College Park is dependant upon Atlanta, not independent of it. WNNX’s efforts to link College Park to Atlanta’s airport demonstrates that College Park is merely a part of the Atlanta Urbanized Area generally and an extension of the City of Atlanta in particular.

17) Attachment B hereto is a copy of a web page from The William B. Hartsfield International Airport’s web site. While WNNX’s Petition attempts to portray the airport as belonging to College Park, page 1 of Attachment B shows that the airport is owned by “The City of Atlanta.” (!)<sup>13</sup> WNNX’s Petition is silent as to how an airport which is owned by the City of Atlanta

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<sup>12</sup> WNNX posits that satisfying five out of the eight interdependence factors will cause the Commission to consider College Park a community for § 307(b) purposes. WNNX Petition, ¶ 9. However, the Commission has clearly stated that the eight factors will not be applied mechanically.

<sup>13</sup> Attachment C hereto shows that development of the Atlanta Airport began in 1925 when  
(continued...)

demonstrates that College Park is independent of Atlanta. WNNX's Petition attempts to draw a close connection between College Park and the airport. We encourage the Commission to make the connection and the following information is provided to assist WNNX in showing how closely the Commission should link College Park to Atlanta's airport.

18) Page 1 of Attachment B hereto shows that the Total Airport Area is 3,750 Acres or 5.86 square miles.<sup>14</sup> The land area of College Park is 9.7 square miles. 1990 Census of Population and Housing, 1990 CPH-2-12, p. 46; Attachment D hereto. Because the City of Atlanta owns the airport, it appears that the City of Atlanta owns 60.4% of the land area in College Park. As noted in Attachment E hereto, the City of Atlanta provides the water and the sewer treatment facilities for the airport and it obtains gas from Atlanta Gas Light Company and it obtains electricity from the Georgia Power Company. Thus, while WNNX claims that College Park provides electric, water, and sewer services, WNNX Petition, p. 13 § 8, College Park does not provide those services to more than half of its land area.<sup>15</sup> Again, WNNX's Petition is silent as to how the City of Atlanta's

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<sup>13</sup>(...continued)

the Atlanta City Council leased/purchased land from Coca-Cola. Attachment C hereto shows that there have been three names associated with the airport. Attachment C lists the current name as "William B Hartsfield Atlanta International Airport" even though the word "Atlanta" does not appear in the "official name" as shown on Attachment B. It is noted that the airport is named after the long-time mayor of Atlanta, William Berry Hartsfield and note that the web address includes "atlanta-airport." Whatever the airport's official name may be, it is owned by the City of Atlanta.

<sup>14</sup> There are 640 acres in a square mile.

<sup>15</sup> Attachment F hereto is a copy of the City of College Park's January 1994 "resume." It notes that while College Park Power provides electricity, the power is generated and transmitted by the Municipal Electric Authority of Georgia (MEAG). Thus, it appears that WNNX incorrectly states that College Park "provides electricity to its residents through a City-owned and operated electric power generation and distribution system . . ." WNNX Petition, p. 13 § 8. Also  
(continued...)

ownership of more than half of the land area in College Park evidences that College Park is independent of Atlanta. To the contrary, the two areas are inexorably intertwined.

19) WNNX's claim that "major employers located in the community and which employ primarily College Park residents include Hartsfield International Airport" is false. WNNX Petition, p. 9 § 1. The notion that the airport relies upon College Park for its primary employment base is so farfetched that it does not appear to have been made in good faith. Page 3 of Attachment B hereto reveals that the airport and related businesses at the airport employ approximately 33,000 persons. Given the fact that College Park has just over 20,000 residents of all ages, WNNX Petition, ¶ 15, WNNX's statement that the airport "employ[s] primarily College Park residents" is not truthful and was either made recklessly or was made with specific intent to deceive the Commission.

20) Attachment G hereto is a computer study taken from the 1990 U.S. Census Data Database: C90SSTF3A which reveals that College Park has 10,046 workers 16 years and older. Of these 10,046 College Park residents workers, 8,398 worked outside of College Park. Thus, according to the U.S. Census, a whopping 84% of College Park's residents worked outside of College Park. Not only is College Park not the primary labor pool for the airport, WNNX's statement that "College Park is fully self-sufficient in providing work for its residents," WNNX Petition, pp. 9-10 § 1, is false because the overwhelming majority of College Park residents work

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<sup>15</sup>(...continued)

questionable is WNNX's claim that "the City owns and operates a potable water distribution system and a sanitary sewer collection system." Id. Attachment F discloses that "College Park's water is treated by the City of East Point" and that sewer services are provided by Fulton County and the City of Atlanta. Finally, the second page of Attachment F is a page from a College Park publication to acquaint new comers with College Park and it contains language which promotes its closeness to Atlanta and all that Atlanta has to offer "while preserving the neighborliness of a hometown."

outside of College Park.<sup>16</sup> Attachment G also shows that 3,852 (38%) of College Park's workers work in the Atlanta central city while 8,303 (83%) of College Park's residents worked in the MSA but outside of College Park. These employment figures conclusively demonstrate that a) that College Park is dependent upon the Urbanized Area to fill positions in the businesses which have located in College Park and b) that College Park is dependent upon the Urbanized Area to provide jobs for College Park workers. College Park is clearly part of a regional economy and WNNX's claims that College Park is "self sufficient" is, at best, nonsense.

21) Attachment H is a copy of the route map for the regional Metropolitan Atlanta Rapid Transit Authority (MARTA) Rapid Rail service which provides service to the airport and College Park in the south through Atlanta to North Springs in the North, as well as east/west through Atlanta. Thus, College Park receives transportation services from the regional transportation authority, another indication that College Park is part of the Atlanta Urbanized Area.

22) Attachment I hereto shows that the taxis which are used at the airport are licensed by the City of Atlanta and that "a set fee prevails between the airport and the central business district." While it is assumed that one may take a cab from the airport to a location in College Park, that does not appear to be a major concern for the airport. Moreover, Attachment I shows that limousine

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<sup>16</sup> Also false is WNNX's unsupported claim that "a large number of workers (40%) actually commute from Atlanta and other nearby communities to College Park!" Small did not obtain employment figures for each of the businesses located in College Park. However, if the airport employs 33,000 persons and if each of the 1,648 College Park residents who works in College Park works at the airport, then 95% of the airport's work force commutes to the airport from areas outside of College Park. Clearly, the businesses located in College Park, including huge multi-national corporations such as Coca-Cola, are dependent upon the populations of the Atlanta Urbanized Area to support them. Such commuting is indicative of an interdependent Urbanized Area economy, not independence as WNNX claims.

service runs from the airport “downtown, midtown, and outlying metro Atlanta areas . . .” Once again, College Park is the beneficiary of regional transportation services connected to the City of Atlanta’s airport.

23) WNNX claims that the airport is subject to College Park’s taxing authority. WNNX Petition, p. 14 § 10. While it seems more likely that there is a regional taxing authority which collects and distributes taxes paid by airport related enterprises, Attachment J hereto shows that College Park is entitled to 10.8% of the tax revenue while the City of Atlanta is entitled to three times more of the tax revenue, 33.8%. Thus, even in taxing matters Atlanta and College Park are intertwined, with Atlanta receiving the lion’s share of the airport tax revenues.

24) WNNX asserts that The South Fulton Neighbor is a publication which shows College Park’s independence. WNNX Petition, p. 10 § 2. Attachment K hereto is a copy of a web page entitled “Media in Forest Park.” It seems that the weekly newspaper upon which WNNX relies is published in Forest Park, GA, an area in Clayton County which neighbors College Park and which is also contained within the Atlanta Urbanized Area. Moreover, the title of the publication “South Fulton [county] Neighbor” indicates that it is published with a regional audience in mind and does not qualify as College Park’s “own newspaper or other media” as required by the second of Tuck’s eight interdependence factors.<sup>17</sup>

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<sup>17</sup> Exhibit 1 of WNNX’s Petition contains an October 31, 1997 letter from Martha W. Barksdale, News editor for Neighbor Newspapers, Inc. which states that the South Fulton Neighbor is a regional paper covering “unincorporated South Fulton County . . . Hapeville, East Point, College Park, Union City, Fairburn, and Palmetto.” WNNX’s attempt to use the City of College Park’s Recreation Department’s quarterly newsletter as evidence of College Park’s “own newspaper or other media,” WNNX Petition, p. 10 § 2, shows the thinness of WNNX’s evidence on this issue.

25) WNNX claims that “a number of businesses identify so strongly with [College Park] that they include the words ‘College Park’ in their name.” WNNX Petition, p. 10 § 3. The Commission has previously indicated that

given the intensity and diversity of human activity in urbanized areas, it is commonplace that organizations emerge that identify themselves with some geographic component of the urbanized area, such as a neighborhood, subdivision, or political district.. The test here is not whether such institutions exist, but what they indicate about the relationship between the suburb and the metropolis.

Eatonton and Sandy Springs, GA, 6 FCC Rcd. 6580, 6585 (MMB 1991). The names which businesses assume for purposes of advertising the availability of their goods and services does not indicate the degree of independence of the community from the Urbanized Area. The businesses listed by WNNX as using the “College Park” name include an animal hospital, an appliance store, a florist, a gas station, and several others. None of these businesses is unique to College Park and they are common place in places with populations which are large enough to support them.<sup>18</sup>

26) WNNX claims that “conversations with community leaders confirm that they perceive themselves as living in an autonomous community that does not depend upon Atlanta for its well being or its identity.” WNNX Petition, p. 10 § 3. Exhibit 1 of WNNX’s Petition is an October 30, 1997 letter from the mayor of College Park to WNNX. The letter expresses that College Park is “completely self-supporting.” As discussed above, College Park is not at all “self-supporting” but

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<sup>18</sup> In a rural area, for instance, there might be one veterinary clinic, or one gas station, or one welder, or one florist which provides services to the citizens a number of area towns. In an urban setting, by contrast, because of the density of the population, more of these types of businesses are able to survive and they employ the community’s name in their trade names so that people who hear or see advertising understand where they will have to go to receive the goods or services. The names of the locations are not included in the business names because the business owners “love” the community as WNNX implies.

relies upon regional businesses to provide employment for the College Park workers and to provide workers for the College Park businesses. Moreover, the mayor's letter references College Park's reliance upon regional transportation systems such as the airport, CSX rail, MARTA, and I-85/I-285 which supports a finding that College Park is part of the Atlanta Urbanized Area.<sup>19</sup>

27) If Atlanta and the airport were to be removed from the College Park area, there would not be any need for the 329,000 square foot "City-owned and operated Convention Center," which is located adjacent to the airport, WNNX Petition, p. 12 § 6, p. 13 § 9.<sup>20</sup> Generally, conventions are held at locations which are proximate to large airports able to handle commercial jet traffic and which are located near large cities<sup>21</sup> in order to provide visitors to the convention with traveling convenience and places to visit. There would also not be any reason for College Park to have

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<sup>19</sup> Exhibit 1 of WNNX's Petition includes an October 29, 1997 letter written by the General Manager of WNNX's Atlanta station (99.7 MHz) reporting a conversation he had "with the city manager and mayor of College Park." WNNX's general manger reports that College Park "**is self supportive, not a suburb of Atlanta.**" (Emphasis in original). In a technical sense, the General Manager is correct, College Park is "not a suburb of Atlanta;" College Park is part of the Atlanta Urbanized Area and does not qualify as a "suburb" in that sense. The American Heritage Dictionary, Third Edition on CD-ROM, defines "suburb" as "1. A usually residential area or community outlying a city. 2. The usually residential region around a major city; the environs." However, that technical meaning of "suburb" is not the intended meaning of the General Manager's remarks who is attempting to disassociate College Park from Atlanta. It is difficult to believe that someone would assert that College Park is not a "suburb" of Atlanta when College Park is a part of the Atlanta Urbanized Area. Given the letter writer's palpable lack of objectivity, the Commission should not accord his letter any credibility.

<sup>20</sup> See Exhibit 1, WNNX Petition, City of College Park, Annual Operating Budget, Fiscal Year 1996-97, p. xxi ("The Convention Center was conceived by the governing body in the early 1980's to serve as a magnet for hotel development in the airport corridor and to supplement their revenues through room referrals owing to conventions.").

<sup>21</sup> Conventions are also held in resort areas; WNNX does not claim that College Park is a resort area.

“twenty-seven hotels and motels [to] service the area.” WNNX Petition, p. 12 § 6. That works out to a hotel for every 760 College Park residents; and the mayor plans to build even more hotels. WNNX Petition, Exhibit 1. The hotels located in College Park service the Atlanta Airport and the Atlanta Urbanized Area, not College Park; the number of hotels does not indicate College Park’s independence of, but rather its dependence upon, Atlanta, the airport, and the Atlanta Urbanized Area. Similarly, WNNX’s claim that College Park has “802 licensed [business] establishments,” WNNX Petition, p. 12 § 6, actually demonstrates College Park’s dependence upon the Atlanta Urbanized Area. As discussed above, College Park’s labor force does not come close to serving the employment needs of these businesses and workers must commute into College Park from the Atlanta Urbanized Area.

28) Exhibit 1 of WNNX’s Petition, immediately after the letter written by WNNX’s general manager, contains several pages from the Georgia Municipal Association’s web site. The second page of that web site print out shows that College Park is a member of the Atlanta Regional Development Commission. This web page constitutes strong evidence that the City of College Park considers itself to be a member of the larger Atlanta area economic community rather than a stand alone “self sufficient” community. While the evidence presented above clearly paints the picture, the Georgia Municipal Association’s web site puts the icing on the interdependent cake.

29) WNNX asserts that College Park has its own elected officials, police force, and its own zip code. WNNX Petition, pp. 11-13 §§ 4,5, 7. While these items may tend to show that College Park is legally constituted community for allocation purposes generally,<sup>22</sup> they do not speak to the

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<sup>22</sup> The Commission's long standing policy is to allot channels to communities  
(continued...)

issue of College Park's dependence upon the City of Atlanta and the Atlanta Urbanized Area.<sup>23</sup> The evidence reveals that College Park is a dependent part of the Atlanta Urbanized Area and that life in College Park would be severely diminished if Atlanta and the airport were removed from College Park's daily life cycle. Thus, College Park and the City of Atlanta and the Atlanta Urbanized Area are bound together, WNNX's protestations to the contrary notwithstanding.<sup>24</sup>

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<sup>22</sup>(...continued)

composed of geographically identifiable population groupings. This requirement is generally satisfied if the proposed community is either incorporated or listed in the U.S. Census in which case we do not require the rulemaking petitioner to submit additional demographic information to supplement a finding of community status.

Brookline, Missouri, 10 FCC Rcd 13038 ¶ 4 (Alloc. Br. 1995). The fact that an incorporated area has an elected governmental body seems mandatory and does not further the interdependence discussion. Moreover, a zip code lacks any evidentiary weight regarding a community's purported independence from a larger, nearby community. Raljon, Maryland, a "community" created in 1997 to hold the Washington Redskins new football stadium has a zip code, 20785, but no residents, ditto the Commission (20554).

<sup>23</sup> The Commission has determined that Williamsburg, VA is part of the Norfolk-Virginia Beach-Newport News Urbanized area (with 31 transmission services) although it is incorporated with a local government, has taxing authority and provides various municipal services, as well as a businesses base, and was located approximately 20 miles from the Urbanized Area of 1,323,098 people. Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg, and Fort Lee, VA, 7 FCC Rcd. 6309 (MMB 1992). In Bon Air a community change approved because "the loss of reception service in an extremely well served area, in order to provide reception service to a greater number of people," was warranted. Id., at 6311. Instantly, WNNX admits that 13.9% of its loss area will receive service from fewer than five aural services, i.e., Anniston is not "extremely well served."

<sup>24</sup> At one time it was the Commission's policy that "the public interest is served by a licensee maintaining its main studio in its city of license is one of the means by which we have implemented Section 307(b) of the Communications Act of 1934." Memorandum Opinion and Order, 104 F.C.C.2d 865, 871 ¶ 10 (Comm'n 1986). Over time the Commission has relaxed the main studio requirement such that WNNX would be permitted to locate its College Park main studio in the City of Atlanta, however, § 307(b) remains a concern. See Report and Order, adopted August 11, 1998 (MM Docket No. 97-138) which permits main studio facilities to be located within 25 miles of the center point of the city of license. In view of the fact that WNNX already has a main studio facility  
(continued...)

**B. COUNTERPROPOSAL TO REALLOT CHANNEL 264A TO SOCIAL CIRCLE, GA  
AND UPGRADE IT TO 264C3**

30) Small counter proposes that Station WLRR-FM's channel 264A be reallocated to Social Circle, Walton County, GA as that community's (and the county's) first local aural service (allotment priority 3).<sup>25</sup> Social Circle has a town council, a police department, a high school, and it is listed by the U.S. Census as a community of 2,755 persons. 1990 Census of Population and Housing, 1990 CPH-2-12, p. 53. Thus, Social Circle is a community for § 307(b) allotment purposes.<sup>26</sup> Attachment L hereto is an Engineering Exhibit in support of the counterproposal to reallocate Channel 264A from Milledgeville, GA to Social Circle, GA.<sup>27</sup> Included in the Engineering Exhibit is a statement that "all areas of loss and gain have a minimum of five aural services without

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<sup>24</sup>(...continued)

in Atlanta (WNNX 99.7 MHz, 3405 Piedmont, Road), economics dictates that WNNX's College Park station would use the same existing facility. Even the possibility that WNNX has the ability to identify its proposed College Park station with Atlanta in this manner is sufficient to dissuade allocation of the channel to College Park.

<sup>25</sup> Pursuant to 47 C.F.R. § 1.420(d), "there is no prohibition against a petitioner submitting, as a counterproposal, a new proposal which is mutually exclusive with that originally submitted and proposed in a Notice of Proposed Rule Making." Canovanas, Culebra; Las Piedras, Mayaguez; Quebradillas, San Juan; Santa Isabel and Vieques, Puerto Rico, and Christiansted and Fredericksted, Virgin Islands, 7 FCC Rcd 3324, 3327 ¶ 18 (Alloc. Br. 1992).

<sup>26</sup> The Commission's long standing policy is to allot channels to communities composed of geographically identifiable population groupings. This requirement is generally satisfied if the proposed community is either incorporated or listed in the U.S. Census in which case we do not require the rulemaking petitioner to submit additional demographic information to supplement a finding of community status.

Brookline, Missouri, 10 FCC Rcd 13038 ¶ 4 (Alloc. Br. 1995).

<sup>27</sup> Mr. Small hereby states his intention to apply for and to construct the proposed Social Circle, GA station.

considering the licensed WLRR facilities or the facilities proposed for either [Covington and Social Circle] substitute use.” Engineering Exhibit, p. 3.

### **C. COMPARATIVE EVALUATION**

31) Allocation of Channel 263C3 to College Park--As discussed above, College Park is located within the Atlanta Urbanized Area and it cannot be separated out of that area for § 307(b) allocation purposes. Accordingly, the 35 aural services licensed to the Atlanta Urbanized Area and the two outstanding construction permits authorized to the Atlanta Urbanized Area, Attachment L hereto, p. 3 must be attributed to College Park for allocation purposes. Small’s Covington proposal would provide Covington with its second local aural and its first local FM service. Small’s Social Circle proposal would provide Social Circle with its first local service (priority preference 3) and would provide the Walton County with its second service.<sup>28</sup> Small’s Social Circle would serve a marginally larger number of persons than Small’s Covington proposal. Small’s Social Circle proposal is preferred under the Commission allotment priorities.

32) Even if the Atlanta Urbanized Area services are not attributed to College Park and WNNX’s proposal is considered to provide the first local service to College Park, Small’s Social Circle proposal would prevail under allotment preference priority 4, other public interest considerations. Both parties would be considered as proposing first local services. While WNNX would be providing first local service to 20,457, persons compared to Small’s 2,755, WNNX’s proposal is dependent upon replacing the relocated Anniston station with two proposed allotments

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<sup>28</sup> Station WKUN-AM provides daytime service to Monroe, GA.

(Anniston and Ashland, AL) in order to minimize the loss of service in the Anniston area.<sup>29</sup> Thus, when viewed in its best light from WNNX's point of view, WNNX's proposal requires the to accept as fact that WNNX will construct **three** new radio stations in an attempt to create the balanced distribution of radio signals required by § 307(b). While WNNX's proposal is dependent upon the construction of two additional radio stations,<sup>30</sup> Small's proposal requires the construction of only one station.

33) Even if the Commission were to assume the addition of two signals to the Anniston area, WNNX's proposal will cause 13.9% of the 658,920 Anniston area population (91,589 persons) to receive fewer than five full time aural reception services, WNNX Petition, ¶ 27, Technical Exhibit, pp. 8-9, while neither of Small's proposals will result in the reduction of aural services below five to any person located in the Milledgeville area. Attachment L, hereto, p. 3. The Commission has determined that "the replacement of an operating station with a vacant allotment does not adequately cure the disruption of existing service to the public" Bay City, et al. TX, 8 FCC Rcd. 1552, 1554

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<sup>29</sup> Even with the addition of the two services WNNX proposes, there would be places in the Anniston area which would receive only two aural services after the relocation. Attachment L hereto, Engineering Statement, p. 3. WNNX does not claim that either of its Anniston "fill-in" proposals receives a first, second, or third priority preference. Thus, those stations are considered in connection with the fourth priority, "other public interest considerations," in determining whether WNNX's relocation to College Park makes sense under § 307(b). Moreover, the Commission will not get a complete picture of the service loss to the Anniston area until WNNX provides the population figures for the proposed Anniston Class C3 and the Ashland Class A stations. NPRM, ¶ 11.

<sup>30</sup> WNNX has stated its intention to apply for and construct the additional two stations, WNNX Petition, ¶ 21. However, WNNX is attempting to leave Anniston for the more profitable Atlanta Urbanized Area. It is not credible to believe that WNNX will build two additional radio stations, thereby substantially increasing its costs, in order to provide inferior service to a less profitable market. Moreover, the Commission does not enforce this type of statement of intent and there is no requirement that WNNX follow through with its suggestion.